

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH :: RAIPUR

VIRTUAL HEARING

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.04/RPR/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Pravin Singh, S/o.Ram Bharose Singh, Hotel Madhuram Matri Nagar, Risali Bhilai (C.G.) PAN: AJBPS 7385 N	Vs	The Deputy Commissioner of Income Tax Bhilai-1(1), Bhilai(C.G.)
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri R.B.Doshi – AR
Revenue by	Shri Piyush Tripathi – DR
Date of hearing	20/03/2023
Date of pronouncement	20/04/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals)-II, Raipur, dated 07.10.2016 emanating from assessment order dated 23.03.2015 under section 143(3) r.w.s 147 of the I.T.Act, 1961 for the A.Y.2010-11.

The Assessee has raised the following grounds of appeal:

“1. The Id. Commissioner of Income-tax (Appeals) is not justified in partially allowing the appeal by partially considering the facts of the case.

2. The ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs.20,10,000/- made by the AO in spite of Assessing officer examining both the persons on oath and due statement recorded at the time of original hearing. The Id. Commissioner of Income-tax (Appeals) considered the oath of one person and neglected oath of other person.

3. The ld. Commissioner of Income-tax (Appeals) has erred in partial allowing the ground of appeal without considering the fact that the amount received by the appellant was backed by one sale agreement jointly by two sellers.

4. The ld. Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs.20,10,000/- made as unexplained cash credits without considering the facts of the case in their entirety.”

Brief facts :

2. The assessee filed Return of Income on 15.10.2010 declaring total income of Rs.26,02,470/- for A.Y. 2010-11. The Assessing Officer(AO), Deputy Commissioner of Income Tax-Bhilai passed an assessment order under section 143(3) assessing the total income at Rs.37,02,470/-. The addition of Rs.11 lakhs was made to Net Profit by rejecting the books of account under section 145(3) of the Act. Subsequently, the AO i.e. DCIT-1, Bhilai(C.G.) issued a notice under section 148 of the Act, dated 25.04.2013 which was duly served on assessee on 02.05.2013. The AO has recorded reasons for reopening which are appearing in the assessment order passed under section 143(3) r.w.s 147 of the Act dated 23.03.2015. The AO in para 2 of the assessment order under section 143(3) r.w.s 147 has held as under:

“2. The main issue in this case relates to the unsecured loan amounting to Rs.55,60,000/- advanced by Shri Jaffar Bhai to the assessee. Although, the assessee furnished some documents justifying the source of the credit and creditworthiness of the lender but it was found that the said documents was not sufficient to justify the sources of the loan. Accordingly, the then Inspector was directed to make inquiry and on receipt of the report, the ITO-3, Bhilai, was requested to verify the return of Shri Jaffar Bhai which was reported to have been filed in his ward. It was reported by the ITO vide letter dated 31.03.2013, that there was no such return against the Ack. No. 003988 in the name of Shri Jaffar Bhai was found filed. The Inspector of this office was again directed to verify the relevant receipt register of ITO-3, Bhilai. As per the report given by the Inspector 03.07.2014, found placed on records, it is seen that against receipt No. 3988 d 31.07.2010 it was found that one Ku. Kakoli Bhattacharjee (PAN: BAKPS0869Q) has filed the return of income for the A.Y. 2010-11. This return also found processed on AST on 30.07.2011. In the present proceedings, this issue was again got examined and as per ITO-1(3), Bhilai's report dated 20.03.2015, the Ack. No. 3988 appearing in the receipt' register pertains to whereas, the intimation u/s. 143(1) shows the date of filing as 31.07.2010.”

3. Aggrieved by the assessment order, assessee filed appeal before the Id.CIT(A). The Id.CIT(A) vide order dated 07.10.2016 held as under :

“1.5 On perusal of the assessment order I find that the AO has all along been treating the advances for the impugned property as loans whereas the appellant had clarified that they were not loans but advances given for the purchase of the property. From the concluding para of the assessment order it appears that since the receipt number of the return filed by Rashid Khan for A Y 2010-11 did not match with that in the manual records through enquiries conducted by the Inspector the AO disbelieved the claims of the appellant and came to the conclusion that Rashid Khan had not filed his return for the relevant period and hence the advances for the property made by him was open to doubt. Except for this observation made by him I find no independent exercise relevant to the proceedings have been conducted by the AO in support of the view taken by him in making the addition. The AO has held that the impugned receipt number of the return filed pertains to some other assessee and accordingly on this premises the AO disbelieved the submissions made. The Id counsel appearing on behalf of the appellant brought to my notice that not only die return for the

relevant year was filed but was also processed and the demand raised as appearing in the intimation u/s. 143(1) of the Act was also paid by Rashid Khan for the A Y 2010-11. During the assessment proceedings the statement of Jafar Rashid Khan and Zahir were recorded by the AO. In the statement of Jafar Rashid Khan recorded I find that in reply to question number 4 it has been submitted by him that he paid Rs 35,50,000/- to the appellant and the details of such payment have been enumerated by him. The same facts are also appearing in the schedule of payments made in reply to question no. 5 of the statement. The sources for making the advance payments to the appellant by sale of properties along with description also finds mention in the statements recorded of Jafar Rashid Khan. Importantly in the statement it has also been submitted that owing to the dispute that arose with respect to the impugned property Rs. 35,50,000/- was returned to the appellant in installments during the assessment year 2010-11 and 2011-12. I find that the AO has ignored the above submissions and facts during the assessment proceedings and made the addition without looking at them in the right perspective. In fact the necessary material was before the AO at the time of assessment proceedings which appears to have been disregarded in making the addition by taking a contrary view. In view of the above facts and circumstances of the case I am of the opinion that the addition of Rs. 35,50,000/- added u/s. 68 of the Act is unjustified and deserves to be allowed. Accordingly the appeal against the addition of Rs.35,50,000/- out of Rs. 55,60,000/- is allowed.

1.6 Coming to the balance amount of Rs. 20,10,000/- which was advanced by Shri Zahiruddin to the appellant also for purchase of property it was submitted in his statement that the sources of Rs.20,10,000/- was his personal savings amounting to Rs.4,60,000/- and the remaining amount was received from his brother and friends from NRI account. In the same statement the AO required Zahiruddin to substantiate the details of the sums so received by him from his brother and friends that was advanced for purchase of property. He expressed his inability to provide the necessary material. Besides the above facts emerging from the statement no supporting details or documents were submitted by Zahiruddin in support of the sources of the money given to the appellant. The identity, creditworthiness and genuineness of Zahiruddin does not appear to have not been established. In the absence of such vital details the addition of Rs.20,10,000/- received from Zahiruddin whose sources have been established deserves to be confirmed in the hands of the appellant. In this context it is important to place reliance on the decision of the hon'ble MP High Court in the case of Seth Kalekhan Mahomed Hanif vs. Commissioner of Income tax reported in 34 ITR 0669 wherein the hon'ble Court held :-

“The assessee is always in a better position to know whence the income or the cash deposits came. Of course the assessee always gives an explanation and that explanation may be true or it may be false. The Department is under no bounden duty to accept the explanation and if the assessee fails to tender evidence or burkes an enquiry, then the ITO is justified in rejecting the explanation and holding that the income is from an undisclosed source”

4. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

5. The Id.Authorised Representative(Id.AR) submitted additional grounds of appeal, which are as under :

“i) The reassessment proceedings and the consequent reassessment order are illegal ab initio void inasmuch as reasons were not recorded by AO before issue of notice u/s 148(2). The reassessment order is liable to be quashed being unsustainable.

ii) The reassessment proceedings initiated by AO are illegal ab initio void inasmuch as no approval of the higher authority u/s 151 was obtained by the AO before reopening the case. Consequent order is unsustainable and liable to be quashed.

5.1 The Id.AR submitted that no approval was obtained by the AO before initiating re-assessment proceedings which is illegal and ab-initio-void. The Id.AR submitted that it is mandatory under section 151 to obtain approval of higher authorities before issuing notice under section 148 of the Act.

5.2 On merits of the case, the Id.AR submitted that assessee had entered into an agreement for sale on 15.04.2009 with Shri Jafar Rasheed Khan and Shri Zaheeruddin for his flat situated in Noida, Uttar Pradesh for a total consideration of Rs.65 lakhs. The said

agreement for sale was duly notarised. The copy of the agreement of sale is on page no.8 to 13 of the paper book. The ld.AR submitted that Rs.55 lakhs they have received as part consideration for the sale transaction. The AO had recorded statement of Shri Jafar Rasheed Khan and Shri Zaheeruddin. They both confirmed the total payment of Rs.55,60,000/- made to assessee. They also explained the source of the said amount in the statements recorded by the AO. Thus, these were not unsecured loans. The assessee has proved identity of the lenders, genuineness of the transaction and creditworthiness. The AO has merely added on the basis that the Return of Income of Mr.Jafar Rashid Khan filed with ITO-3, Bhilai having receipt no.3988 was not of Mr.Jafar Rashid Khan as per the report submitted by the ITO-3, Bhilai. The ld.AR submitted that the AO ignored copy of order under section 143(1) submitted by Mr.Jafar Rashid Khan which clearly explains that not only he had filed return but Income Tax Department had passed the order under section 143(1) of the Act. The AO has not challenged the genuineness of the said order under section 143(1). Once the assessee has proved by documentary evidence, then it is the liability of the AO to conduct further enquiries if he feels necessary. Therefore, the ld.AR vehemently stated that the addition made is bad in law. The ld.AR relied on certain case laws mentioned in the paper book.

Submission of Id.DR :

6. The Id.DR relied on the order of the AO and Id.CIT(A).

Findings and Analysis:

7. We have heard both the parties and perused the records. We first deal with the additions made by the AO and then additional grounds taken by the assessee.

7.1 It is a fact that assessee had entered into an agreement for sale dated 15.04.2009 with Shri Jafar Rasheed Khan and Shri Zaheeruddin Khan to Sale his House number 512 Block A, Sector 3.Greater Noida, UP. The said agreement for Sale is duly Notarised. Statement of both these persons were recorded by the AO. Both these persons accepted payments made by them to assessee. Mr.Jafar Rashid Khan in his statement admitted that he had paid Rs.35 lakhs to assessee as advance for the purchase of the flat mentioned in the agreement for sale. Mr.Jafar Rashid Khan has also explained the source of the impugned amount. In the statement Mr.Jafar Rashid Khan had explained that he had sold his agricultural land and the amount was paid to assessee for purchase of the flat. The remaining amount of Rs.20.10 lakhs was paid by Mr.Zaheeruddin to assessee. The Id.CIT(A) has accepted the assessee's submission with respect to amount of Rs.35 lakhs paid by

Mr.JafarRashid Khan. The Department has not filed any appeal against the said deletion of Rs.35 lakhs.Therefore, the only additions which remains for our consideration is Rs.20.10 lakhs paid by Mr.Zaheeruddin Khan to assessee . Ld.CIT (A) has mentioned about the statements recorded by the AO. In the assessment order the AO has not at all referred to these facts that Rs.35 lakhs was paid by Mr.Jafar Rashid Khanand Rs.20,10,000/- paid by Mr.Zaheeruddin, though the statements were recorded by the AO.

7.2 In this case the most important admitted fact is that assessee had entered into an Agreement for Sale with these two persons and he has received the impugned amounts from them. The AO and ld.CIT(A) has never doubted the genuineness of the ‘Agreement to Sale’. Once the AO has accepted that the amounts were part Sale consideration, the AO cannot treat it as unsecured Loan. The Assessee has fulfilled his onus to prove that the amount received is part sale consideration and the purchasers have accepted the same in the statement recorded by the AO. Once the assessee has fulfilled the onus cast upon him, the onus shifts to AO. In this case the AO has not made any adverse observations regarding Mr. Zahiruddin. The Ld.CIT(A) has mentioned that identity, creditworthiness, and genuineness of Zahiruddin does not appear to have been established. However, we do not agree with this observation of the

Ld.CIT(A) as Mr.Zahiruddin had appeared before the AO and AO had recorded his statement. Hence, Identity is established. Mr.Zahiruddin had admitted in his statement regarding impugned 'Agreement to Sale', the Ld.CIT(A) has not doubted the genuineness of the impugned 'Agreement to Sale'. Therefore, the genuineness of transaction is established. Mr.Zahiruddin's PAN: BEZPS8180M was provided to the AO by assessee. (page 22-25 of Paper book filed by the assessee). Mr.Zahiruddin runs a medical shop. All these facts were before the AO and AO has not made any adverse comments. In these facts and circumstances of the case we are of the opinion that the assessee has established the source of the impugned credits, which was on account of 'agreement to sale', both the purchasers have accepted in the statement the fact of paying the amounts to the assessee as part sale consideration, both have provided PAN. In these facts and circumstances of the case, we are of the opinion that the addition of Rs.20,10,000/- confirmed by the Ld.CIT(A) needs to be deleted. Hence, we direct the AO to delete the addition of Rs.20,10,000/- confirmed by the Ld. CIT(A). Accordingly, Ground No.1 to 4 of appeal of the assessee are allowed.

Additional Grounds :

8. In the Additional Ground No.1, the assessee has stated that no reasons were recorded by the AO before issue of notice u/s.148.

However, on perusal of the Assessment Order, it is observed that the reasons are mentioned in the assessment order itself. The AO has also mentioned in the assessment order that the reasons were provided to the assessee. The assessee could not rebut these facts. Hence the Additional Ground No.1 of the assessee is dismissed.

Additional Ground No.2:

8.1 The assessee vide the additional Ground No.2 has stated that no approval u/s.151 was taken by the AO before issue of notice u/s 148.

8.2 The section 151 as applicable at that point of time is reproduced here as under :

“151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 ⁹³[by an Assessing Officer, who is below the rank of Assistant Commissioner ⁹⁴[or Deputy Commissioner], unless the ⁹⁵[Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :

***Provided** that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of ⁹⁵[Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the ⁹⁵[Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]”

9. In this case assessment year is A.Y. 2010-11. The notice u/s.148 was issued on 25/04/2013 by the Dy.Commissioner of Income Tax and the assessment order has been passed by the Dy. Commissioner of Income Tax. Therefore, as per section 151 of the Act, no approval of Jt.Commissioner of Income Tax was required for Dy.Commissioner of Income Tax to issue notice u/s.148 within four years. In this case notice u/s 148 has been issued within four years and by Dy.Commissioner of Income Tax. Therefore, the Additional Ground No.2 of the assessee is dismissed.

10. In the result, appeal of the Assessee is Partly Allowed.

Order pronounced under Rule 34(4) of Appellate Tribunal Rules, 1963.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20th April, 2023 / SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Applicant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Raipur.
4. The Pr. CIT-I, Raipur.
5. DR, ITAT, "Raipur" Bench.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलिय अधिकरण, पुणे/ITAT, Pune.